



Levy and Sale of Tangible Personal Property

Christopher B. McLaughlin

Compared to the attachment and garnishment process, seizing and selling a taxpayer's personal property to satisfy delinquent property taxes can be a complicated endeavor. But when real property is not involved and the tax collector cannot locate a taxpayer's bank account or employer, the levy and sale of personal property may be the best collection option available. Indeed, the mere threat of the seizure of a taxpayer's personal property and the likely disruption of that taxpayer's business or everyday life can sometimes produce prompt payment of outstanding taxes.

This bulletin discusses the legal issues involved with the levy and sale of personal property and provides several sample forms for use in the process.

1. When and against Whom May the Levy and Sale Remedy Be Employed?

The same principles discussed at length in Christopher B. McLaughlin, "Attachment and Garnishment," *Property Tax Bulletin* No. 152 (February 2010),¹ control when and against whom the levy and sale remedy may be used. The most important of these principles are found in Section 105-365.1 of the North Carolina General Statutes (hereinafter G.S.), which identifies the taxpayers responsible for various types of property taxes and which outlines when enforced-collection remedies can be used against those responsible taxpayers.

The responsible taxpayer for taxes owed on real property is the owner of record as of the delinquency date, normally January 6 of the fiscal year for which taxes have been levied. Successive owners of real property also are personally responsible for taxes that became delinquent while the property was owned by a previous taxpayer. For taxes owed on personal property other than registered motor vehicles, the only responsible taxpayer is the listing taxpayer, that is, the owner of record as of January 1 preceding the fiscal year for which the taxes were levied. Successive owners of personal property are not personally responsible for taxes on property

Christopher B. McLaughlin is a School of Government faculty member who specializes in local taxation. McLaughlin is writing a text to update and replace William A. Campbell's seminal work, *Property Tax Collection in North Carolina*, the fourth edition of which was published more than a decade ago. This bulletin represents one chapter of the forthcoming collection.

1. Published by the School of Government, this document is available at no cost at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb152.pdf.

listed in the name of a previous owner. For taxes owed on registered motor vehicles, the responsible taxpayer is the owner of record on the date the vehicle's registration was applied for or renewed. Successive owners of a registered motor vehicle are not personally responsible for taxes on a vehicle that was registered in the name of a prior owner. Some exceptions to these general rules exist, most notably the "going-out-of-business" provisions in G.S. 105-366(d), which allow tax collectors, in certain situations, to use enforced-collection remedies against purchasers of business personal property.

Tax collectors may target *any* personal property owned by the responsible taxpayer with the levy and sale remedy regardless of the type of property taxes owed. For example, a tax collector may levy upon and sell a taxpayer's automobile for property taxes owed on that automobile or for property taxes owed on real property or other personal property owned by that same taxpayer.² The tax collector can also target for levy and sale property that was transferred by the responsible taxpayer to a close relative³ or property held by the estate of a deceased taxpayer⁴ or personal property of a partner for the tax obligations of a partnership.⁵

A detailed discussion of all of the provisions concerning responsible taxpayers and enforced collections is presented in McLaughlin, "Attachment and Garnishment" (see note 2).

2. Is a Court Order Needed to Use the Levy and Sale Collection Remedy?

No. The order of collection that must be given to the tax collector each year by the governing board "shall have the force and effect of a judgment and execution against the taxpayers' real and personal property."⁶ In other words, the order of collection is the equivalent of a court order authorizing the tax collector to seize and sell a taxpayer's tangible personal property to satisfy delinquent tax obligations. To minimize possible taxpayer complaints about the tax collector's authority to use this remedy, tax collectors should insist that the order of collection issued by their governing boards contains the following language recommended in G.S. 105-321(b): "[T]his order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property of such taxpayers."

3. Who Is Authorized to Make the Levy?

The tax collector, a "duly appointed" deputy tax collector,⁷ a sheriff, or, for municipal taxes, a municipal police officer can make the levy and conduct the sale.⁸ In the interest of security of both persons and property, however, it makes good sense to involve a law enforcement officer in the process.

2. G.S. 105-366(b)(1). The reverse is not always true. Taxes owed on a registered motor vehicle are not a lien on that taxpayer's real property, meaning that foreclosure of real property is not a remedy for the collection of taxes on registered motor vehicles. G.S. 105-330.4(c).

3. G.S. 105-366(b)(2).

4. G.S. 105-366(b)(4).

5. G.S. 105-366(b)(8). This provision requires that the tax collector first exhaust all collection remedies against partnership property before targeting property owned by an individual partner.

6. G.S. 105-321(b).

7. G.S. 105-367(b).

8. *Id.*

If the tax collector prefers that a law enforcement officer actually make the levy rather than simply be present while the tax collector does so, G.S. Chapter 105 (referred to as the Machinery Act) requires that the local governing body first authorize the tax collector to delegate the levy and sale duties to a sheriff or police officer.⁹ After receiving this authorization, the tax collector must “direct an execution” to the law enforcement officer. The Machinery Act does not describe the form for such an execution, but it should identify the taxpayer and the taxes, interest, penalties, and costs owed; request that the law enforcement officer levy upon and sell the taxpayer’s personal property to satisfy the amounts owed; and reference the statutory authority for the levy. If the tax collector knows of the existence and location of specific personal property that should be targeted by the law enforcement officer, it would of course be helpful to include that information on the execution document. Buncombe County uses a form similar to the following:

Levy against Personal Property for Taxes

TO: The Sheriff of _____ County:

Whereas, the taxpayer(s) named below has failed to pay _____ County certain lawfully due taxes for the year(s) set out below:

[name and address of taxpayer(s)]

[tax years and amounts owed, including interest and penalties];

and whereas, under the provisions of G.S. 105-321, the _____ County Board of Commissioners has issued an order of collection having the force and effect of a judgment against the property of the above named taxpayer(s), said order being the provisions of G.S. 105-367(b), the _____ County Board of Commissioners has issued an order authorizing the Tax Collector to call upon the Sheriff to levy on and sell personal property subject to levy. You are therefore directed to satisfy said claim for taxes, plus the cost of the levy and sale, out of the proceeds from the sale of personal property of the above named taxpayer.

By: _____ , _____
County Tax Collector

Date: _____

4. How Is a Levy Made?

Neither the Machinery Act nor the General Statutes’ execution sale provisions referenced by the Machinery Act describe exactly how a levy must occur. The only guidance available comes from a few state court opinions involving levies, some of which date to the nineteenth century.

⁹. *Id.*

Generally, the official making the levy must actually seize the property and remove it from the taxpayer's possession. Assuming the property can be moved, it is not sufficient to leave the property in the taxpayer's possession and simply post a notice indicating that the property has been levied upon. As the North Carolina Supreme Court observed more than 120 years ago, "A seizure is necessary; and if, from the nature of the property (as is the case with the growing crop, but not of the cotton in the gin and crib), an actual seizure be impossible, some act as nearly equivalent to a seizure as practicable, must be substituted for it."¹⁰ If the property cannot be moved, then the official making the levy should both post notice of the levy and take steps to secure the property so that it is no longer under control of the taxpayer.

For example, if the property being levied is a car, it can be towed to a secure county parking lot. Merely placing a parking boot on the vehicle may not be sufficient and also heightens the risk of damage to the car while immobilized in an unsecured area, damage for which the tax collector could be liable. If the property being levied is an airplane, it could be towed to a secure hanger on the airport grounds. If the property being levied consists of computers and cash registers, they should be physically removed from the taxpayer's business location and placed in a secure storage facility. If the property being levied is heavy factory equipment that cannot be moved without great cost or damage to the property, the factory in which the equipment resides should be secured around the clock by an employee of the tax department or the sheriff's department or a private security firm.

The cost of seizing and securing the property, which could include the cost of hiring a moving or towing company, renting storage space, or hiring a security guard, can be recovered from the sale proceeds.¹¹ Once the property is seized and secured, the tax collector has responsibility for it and can be held liable for damage to the property caused by the tax collector's negligence.¹² Immediately upon seizing and securing the property, the tax collector or sheriff should take photographs of the property and/or make a detailed inventory of it to protect against subsequent accusations of damage or loss by the taxpayer. Prior to seizing the property, the tax collector should confirm that the local government has both a secure storage location and adequate insurance for the property. When cars or mobile homes are seized, the best option may be for the tax collector to ask the towing or moving company to store the seized property.

In North Carolina, an officer may not forcibly enter a residence to levy upon personal property.¹³ As a result, tax collectors cannot enter a home to levy upon and seize personal property without permission from the homeowner. This prohibition against forced entry likely extends to a garage that is attached to a residence. But such forcible entries as lock picking or window breaking are permitted against buildings that are not residences, including detached garages and barns.¹⁴

10. *Long v. Hall*, 97 N.C. 286 (1887). See also *In re Phipps*, 202 N.C. 642 (1932) (no levy accomplished when officer merely gave clerk of court notice of levy but left funds to be levied in possession of clerk of court); *Rives v. Porter*, 29 N.C. 74 (1846) (levy accomplished when officer placed horses subject to levy in owner's barn but slept on the premises to secure the property).

11. G.S. 105-367(d) and G.S. 1-339.70(a).

12. 70 AM. JUR. 2d, *Sheriffs, Police, and Constables*, § 50 (2005).

13. *Red House Furniture Co. v. Smith*, 310 N.C. 617 (1984).

14. 30 AM. JUR. 2d, *Executions and Enforcements of Judgments*, § 199 (2005).

It is a crime to interfere with a public officer making a levy and to refuse to surrender, to remove, or to hide property that has been levied upon.¹⁵ Although tax collectors are permitted to use reasonable force against a taxpayer in order to complete a levy, the wiser course of action if there is any likelihood of encountering a belligerent taxpayer is to involve a law enforcement officer in the process.¹⁶

It is possible to levy upon property that has been levied upon already by another taxing authority. In such a situation, the second taxing unit need not seize the property and remove it from the possession of the first. For example, assume that Carolina County levies upon a Toyota Camry owned by Wanda Wolfpack to satisfy her outstanding property taxes. If Wanda also owes property taxes to Blue Devil City, Blue Devil City may also levy upon Wanda's car simply by providing notice of levy to the official conducting the levy and sale for Carolina County. For more details on the priority of successive liens on the same real property—in other words, on who gets paid first—see questions 11 and 12 below.

5. What Notice Must Be Given to the Taxpayer When Property Is Levied Upon?

Surprisingly, no formal notice is required when property is seized for unpaid taxes. That said, most tax and sheriff departments do provide the owner of the property with some documentation at the time of levy. Such notice could spur the taxpayer to pay the outstanding taxes and thereby eliminate the need for levy and sale as well as remind the taxpayer of the potential penalties for interfering with a levy. If a law enforcement officer makes the levy, the taxpayer could be handed a copy of the execution order directed to that officer by the tax collector. If the tax collector makes the levy, the taxpayer could be given the following form adopted from that used by Orange County:

15. G.S. 14-223 (obstructing a public officer); G.S. 14-115 (refusing to surrender property or removing property that has been levied upon).

16. State of North Carolina *ex rel.* Peleg S. Rogers & Co. v. Dilliard, 25 N.C. 102 (1842) (permissible to levy horse even if owner is riding said horse). Local legend has it that a former Mecklenburg County tax administrator once chased a private jet down a runway, jumped into the cockpit of the plane, and declared it levied upon. The pilot/delinquent taxpayer threatened to fly the plane out of state but backed down after the administrator threatened to pursue hijacking charges against the pilot if he did. Though successful in obtaining payment, this procedure is not recommended.

STATE OF NORTH CAROLINA
 COUNTY OF _____

v.

Take notice that the undersigned has this day, _____, 20____, seized and levied upon the following described property:

for delinquent property taxes in the amount of \$ _____
 due by you to _____ County for the year(s) _____

and that the undersigned will proceed to sell said property at public auction for cash and apply the proceeds to the payment of said taxes, in accordance with G.S. 105-367 of North Carolina law.

You are further notified that the above described property has been taken into the possession of the undersigned, and you are hereby notified not to remove said property. Such interference is a crime under Section 14-115 of the North Carolina General Statutes.

To redeem your property, you must be prepared to produce proof of identification and pay all costs, such as towing, storage, advertising, and any other costs incurred to date.

This _____ day of _____, 20____

/s/

Tax Collector, _____ County _____

6. How Must the Sale Be Advertised?

The sale of property levied upon for unpaid property taxes is governed by the laws concerning sales “under execution”—that is, sales of property to enforce court judgments—found in G.S. Chapter 1, Article 29B. Those provisions require that notice of the sale of personal property be posted for ten days immediately preceding the sale “in the area designated by the clerk of superior court.”¹⁷ In other words, the only required notice of sale is one that must be posted in the county courthouse. That notice must include the date, hour, and place of sale; a description of the “nature and quantity” of the property to be sold; and a reference to the governing body’s order of collection, which serves as the execution authorizing the sale.¹⁸

17. G.S. 1-339.53.

18. G.S. 1-339.51.

The Machinery Act also authorizes the tax collector to “advertise the sale in any reasonable manner and for any reasonable period of time he deems necessary to produce an adequate bid for the property.”¹⁹ Because the cost of this additional advertising can be added to the cost of sale and recovered from the sale proceeds, most tax collectors will take additional steps beyond the required notice to attract bidders to the sale.

Neither the Machinery Act nor the execution sale provisions require personal notice of the sale to the taxpayer. But as with notice of the actual levy, providing notice to the taxpayer of the sale may help produce payment of the outstanding taxes and eliminate the need for the sale.

For the same reasons, notice should also be given to all parties that hold a lien on the property to be sold, such as a financing company that has recorded a security interest in an automobile. Security interests are also commonly recorded on business equipment, such as computers and inventory. Because these liens could be extinguished when the property is sold for unpaid taxes, the lienholders should receive notice so that they have an opportunity to protect their interests by paying the outstanding taxes or purchasing the property at the sale. See questions 10 and 11 for a discussion about competing liens on the same property.

7. Must Notice Be Given to the N.C. Division of Motor Vehicles if the Property Being Sold Is a Car or a Mobile Home?

Yes. State law requires that no motor vehicle can be sold by a sheriff or a police officer or by any person under “judicial proceedings” without notice being provided to the Division of Motor Vehicles (DMV) at least twenty days prior to the sale.²⁰ Although a sale by the tax collector under the Machinery Act might not qualify as a judicial proceeding, the safest course of action is to assume that the notice requirement applies to any automobile to be sold for unpaid taxes. The tax collector or sheriff should complete DMV Form LT-101 and submit it to the DMV along with a copy of the execution or order for collection.²¹ This notification requirement also applies to mobile homes that are registered with the DMV. (Form LT-101 is reproduced in the Appendix.)

8. When, Where, and How Must the Sale Occur?

If prior to the sale date the taxpayer pays all outstanding taxes, costs, and penalties, including the costs of seizing and securing the property, the tax collector and/or sheriff should cancel the sale and return the personal property to the taxpayer.²²

If full payment is not made, the sale must then be held as indicated in the notice of sale. Sales of personal property can be held on any day except Sunday, in any place in the county, at any time between 10:00 a.m. and 10:00 p.m. (4:00 p.m. for towns with 5,000 or fewer residents).²³ The personal property must be present at the sale, meaning that in cases of large, immovable property the sale should be held where the property is situated.²⁴

19. G.S. 105-367(c).

20. G.S. 20-114(c).

21. N.C. ADMIN. CODE tit. 19A, ch. 03D, sec. .0404 (sale of motor vehicle under judicial proceedings).

22. G.S. 1-339.57.

23. G.S. 1-339.43 (day of sale); G.S. 1-339.44(c) (place of sale); G.S. 1-339.60 (time of sale).

24. G.S. 1-339.45.

If the personal property consists of multiple items, the items may be sold individually, in groups, or as a whole, depending on which procedure will produce the highest price.²⁵ For example, if the property to be sold consists of six personal computers, the tax collector could sell all six computers as one item, sell two groups of three computers, sell three pairs of computers, or sell each of the six computers individually.

The sale must be made in cash to the highest bidder.²⁶ Immediately upon payment of the high bid, the property must be delivered to the buyer along with a bill of sale or similar record of the transaction.²⁷ The buyer will take the property free and clear of all liens unless the sale proceeds are not sufficient to satisfy a lien that was senior to the tax lien for which the property was sold. See questions 11 and 12 below for a discussion of junior and senior liens.

There is no provision for upset bids on personal property as there is for the sale of real property at a tax foreclosure.²⁸ Nor must the court confirm the sale to the highest bidder.²⁹ This means that the taxpayer's right to "redeem" his or her property by paying the outstanding taxes and costs ends once the sale has begun.³⁰

Another difference between the sale of real property and the sale of personal property for outstanding taxes is that the levy and sale procedures do not authorize the taxing unit to bid at the sale of personal property. This means that the taxing unit cannot set a minimum bid for the property as it can do at a foreclosure sale of real property by submitting a bid for amount of taxes owed.³¹ If the highest bid for personal property is one dollar, then the property must be sold for one dollar regardless of how much is owed in taxes and costs.

9. When May a Sale of Personal Property Be Postponed?

A sale cannot be postponed simply because the bids offered by potential buyers are lower than the amount the taxing unit wanted. The execution sale provisions permit the postponement of a sale in only five situations:

1. when there are no bidders,
2. when the number of bidders is "substantially decreased by inclement weather or by any casualty,"
3. when it is impractical to hold the sale because there are too many other execution sales scheduled for the same time and place,
4. when the tax collector or sheriff cannot hold the sale due to illness or other good reason, and
5. when other "good cause" exists.³²

25. G.S. 105-339.46.

26. G.S. 1-339.47.

27. G.S. 1-339.62.

28. G.S. 1-339.64 (upset bid procedure for sale of real property); G.S. 105-374(o) (upset bid procedure for mortgage-style tax foreclosures).

29. G.S. 105-374(p) (confirmation of mortgage-style tax foreclosure sale of real property).

30. When real property is sold at a tax foreclosure, the taxpayer can terminate the sale and "redeem" his or her property at any point prior to confirmation of the sale. Confirmation cannot occur until after the upset bid period ends, which means that a taxpayer could redeem real property by paying the taxes and costs up to ten days after the initial sale.

31. G.S. 105-376 (taxing unit as purchaser at foreclosure sale).

32. G.S. 1-339.58(a).

The statute does not define “good cause,” but almost certainly it requires something more than a disappointingly low sale price. If a sale is postponed under this provision, the official conducting the sale must publicly announce the postponement and on that same day post a signed notice of the postponement that includes the reason for the postponement as well as the new date and time for the sale.³³

10. What If the High Bidder Does Not Make Good on the Bid?

If the high bidder does not immediately pay the bid in cash, the sheriff or the tax collector should immediately attempt to resell the property.³⁴ If no new bids are received, a new sale can be scheduled and advertised as described above (see question 6).³⁵ The original high bidder is liable for the difference between the original bid and the eventual sale price minus the expenses of resale.³⁶ To enforce this liability, however, a taxing unit would need to bring suit against the original bidder in state court; the unit cannot use Machinery Act remedies to collect the difference between the bids.³⁷

11. How Should Sale Proceeds Be Distributed?

Proceeds from the sale of the levied property should be distributed in the following order:

First, to the sheriff, municipal police officer, and/or the tax collector for advertising and sale fees.³⁸ The sale fees are set by statute and based on the sale price: 5 percent of the first \$500 in sale price and 2.5 percent of the remainder of the sale price plus additional “necessary expenses of the sale,” such as advertising.³⁹ For example, if the sale price is \$1,000, the sale fee will be \$37.50, \$25 for the first \$500 and \$12.50 for the remaining \$500 in sale price.

Second, to the sheriff, municipal police officer, and/or the tax collector for the cost of caring for the property from the time of levy to the time of sale.⁴⁰

Third, to creditors holding previously existing liens on the property that are senior to the tax lien for which the property was sold, unless the property was sold “subject to” the senior liens.⁴¹ (See question 12 for a discussion of competing liens on the same property.)

33. G.S. 1-339.58(b) and (c).

34. G.S. 1-339.69(a).

35. *Id.*

36. G.S. 1-339.69(c).

37. The setoff debt collection procedure found in G.S. Chapter 105A would be available, however. This procedure permits a local government to attach a debtor’s state income tax refund or lottery winnings to satisfy an obligation.

38. G.S. 106-367(d) and G.S. 1-339.70(a).

39. G.S. 7A-311(a)(3). Although this section specifies the fees for sales made by the sheriff, G.S. 105-367(a) also makes it applicable if the levy sale is conducted by the tax collector instead of the sheriff.

40. G.S. 1-339.70(a).

41. 51 AM. JUR. 2d, Secured Transactions, § 643 (2003).

Fourth, to the taxing unit for the taxes, interest, penalties, and costs for which the property was levied upon and sold. The property will be sold free and clear of this tax lien regardless of whether there are sufficient funds to pay all outstanding amounts.⁴²

Fifth, to creditors holding liens on the property that are junior to the tax lien for which the property was sold.⁴³ The property will be sold free and clear of these junior liens regardless of whether there are sufficient funds to pay all outstanding amounts.⁴⁴ (See question 12 for a discussion of competing liens on the same property.) If there are multiple junior lienholders, the best approach may be to provide the surplus funds to the clerk of superior court and allow that official to determine the appropriate priority (see sixth in the sequence, below).

Sixth, to the taxpayer who previously owned the property or, if there are conflicting claims on the surplus funds, to the clerk of superior court so that the clerk can hold a proceeding to resolve those claims.⁴⁵ It is not the tax collector's responsibility to referee conflicting claims to surplus funds.

12. Is the Tax Lien Paid before Other Liens on the Same Personal Property?

Liens generally are paid in the order in which they arose, a process known as first in time, first in right.⁴⁶ However, the Machinery Act gives property tax liens on personal property priority over state tax liens and private liens regardless of when they arose if the tax lien is for taxes owed on the property being sold.⁴⁷ Liens for property taxes on property other than the property being sold are prioritized under the first in time, first in right rule: liens that arose before the taxing unit levied upon the property (senior liens) are paid before the tax lien, while liens that arose after the taxing unit levied upon the property (junior liens) are paid after the tax lien.⁴⁸

For example, assume that the Carolina County tax collector levies upon Tom Tarheel's Lexus SUV for \$1,500 in property taxes and interest owed on that car for 2008, 2009, and 2010. In 2007 Tom had financed his purchase of the Lexus with Big Bank, which still holds a \$15,000 security interest in the car. Because the Carolina County's tax lien represents taxes on the Lexus itself, the tax lien will be senior to Big Bank's lien and be paid first even though Big Bank's lien arose first.

Assume that Tom's Lexus has been involved in a couple of wrecks and that at the tax sale conducted by the sheriff it attracts a high bid of only \$10,000. The proceeds must first be used to pay the sale fee of \$262.50 to sheriff. The tax collector can then deduct the costs of the levy and sale, which in this case amounted to \$737.50 for towing, storage, and advertisement of the sale,

42. 51 AM. JUR. 2d, Liens, § 62 (2000) (sale of property by the creditor holding lien on that property extinguishes that lien).

43. *Id.* at § 94.

44. 51 AM. JUR. 2d, Secured Transactions, § 643 (2003).

45. G.S. 1-339.70(c) and G.S. 1-339.71.

46. *See* 51 AM. JUR. 2d, Liens, § 70 (2000).

47. G.S. 105-356(b)(1). Local tax liens on personal property do not have the same priority over federal tax liens on the same property; both liens are subject to the first in time, first in right rule of priority. 26 U.S.C. § 6323.

48. G.S. 105-356(b)(2).

leaving \$9,000 to be distributed. The tax lien of \$1,500 is to be paid next, leaving only \$7,500 for Big Bank. Big Bank's lien on the car is extinguished even though the sale proceeds are insufficient to satisfy the entire amount Tom owed Big Bank on the car.

Consider these same facts again but assume that Carolina County's \$1,500 tax lien represents taxes owed on Tom's real property, not taxes owed on the Lexus itself.⁴⁹ In this situation, Big Bank's lien on the Lexus takes priority over Carolina County's lien because Big Bank's lien attached first. The Lexus would normally be sold subject to Big Bank's lien of \$15,000, which would discourage bidding on the car as well as reduce the likelihood of the sale producing enough cash to satisfy the outstanding taxes owed by Tom. Whether or not those taxes are completely satisfied, the Lexus would be sold free and clear of Carolina County's tax lien.

For a detailed discussion of the priority of property tax liens on both personal and real property, see Christopher B. McLaughlin, "The Property Tax Lien," *Property Tax Bulletin* No. 150 (October 2009).⁵⁰

13. What Is the Statute of Limitations for Use of the Levy and Sale Remedy?

The ten-year limitation on enforced collections found in G.S. 105-378(a) applies to this collection remedy. This provision provides a taxpayer with a defense to any levy that is attempted more than ten years after the tax for which the levy is conducted came due. Property taxes on real property and personal property other than registered motor vehicles become due on September 1 of the fiscal year for which the taxes are levied.

For example, 2000 property taxes on real property became due on September 1, 2000. Any enforced collection action for 2000 property taxes must be started by August 31, 2010, or else G.S. 105-378(a) would provide the taxpayer with a statute of limitations defense to the action.

This statute of limitations, however, requires only that the collection action begin within ten years, not that it be completed within ten years. Accordingly, the statute of limitations is satisfied if the property is levied upon ten years even if the actual sale of the property occurs outside of the ten-year period.

For example, if on August 30, 2010, a tax collector levies upon and seizes a taxpayer's car for delinquent real property taxes from the 2000 tax year and the car is then sold in mid-September 2010, the taxpayer would not have a statute of limitations defense to the collection action. It does not matter when the actual sale of the car occurs so long as the levy is made before the ten-year period ends.

49. Although taxes owed on a registered motor vehicle do not constitute a lien on real property, taxes owed on real property can justify a lien on that same taxpayer's registered motor vehicle. See G.S. 105-330.4(c) (taxes on registered motor vehicle do not become lien on real property) and G.S. 105-366(b) (tax collector may levy upon any personal property owned by taxpayer who owes delinquent property taxes).

50. Also published by the School of Government, this document is available at no cost at www.sog.unc.edu/pubs/electronicversions/pdfs/ptb150.pdf.

Appendix: DMV Form LT-101

NOTICE OF SALE OF A MOTOR VEHICLE - 20-DAY ADVANCE NOTICE TO DIVISION OF MOTOR VEHICLES

Date _____

A. DESCRIPTION OF VEHICLE: (must be fully completed)			
Make	Year Model	Body Style	Motor No.-- 1953 AND OLDER MOTOR VEHICLES AND ALL MOTORCYCLES (ATTACH PENCIL TRACING)
Serial No.			
State and Year in which vehicle last registered		License Plate Number	
B. LOCATION OF VEHICLE-SALE DATE (must be fully completed)			
Place Stored		Address	Sale Date
Place of Sale		Address	Sale Hour
C. Notice of Sale under JUDICIAL PROCEEDINGS			
Name of Court Authorized Seizure and Sale (Attach copy of court order and/or judgment and/or execution)			
Name of owner from whom the vehicle was seized		Address	
D. Notice of Sale of ABANDONED VEHICLE Pursuant to G.S. 160A-303 City Ordinance No. _____ (COPY OF ORDINANCE MUST BE FILED WITH DIVISION OF MOTOR VEHICLES)			
Place Stored		Address	Sale Date
Place of Sale		Address	Sale Hour
E. Notice of Sale for OTHER REASONS (explain fully and cite statutory provision)			
F. NAME AND ADDRESS OF AGENCY OR DEPARTMENT SELLING VEHICLE			
NAME		STREET ADDRESS OR BOX NUMBER	
CITY, STATE AND ZIP CODE		SIGNATURE AND OFFICIAL POSITION	

NOT REGISTERED IN NORTH CAROLINA.

Forward this notice to: NC Division of Motor Vehicles
License & Theft Bureau
Notice Storage & Theft Unit
3132 Mail Service Center
Raleigh NC 27699-3132

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